

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

V.

JAVIER M. HART,

Defendant.

NO. CR-05-2105-RHW

ORDER DENYING DEFENDANT'S MOTION TO DISMISS, *INTER ALIA*

A pretrial conference was held in the above-captioned matter on November 1, 2005. Defendant was present and represented by Rebecca Pennell; the Government was represented by Assistant United States Attorney Shawn Anderson. Before the Court were Defendant's Motion to Dismiss Case Based Upon Speedy Trial Violations (Ct. Rec. 21), Motion for Disclosure of Evidence Pursuant to Fed. R. Evid. 404(b) and 609 (Ct. Rec. 25), Motion for Discovery (Ct. Rec. 27), and Motion to Compel Grand Jury Transcripts (Ct. Rec. 29). This order memorializes the Court's oral rulings.

Additionally, the Court is scheduled to be in trial on another matter on November 14, 2005, the trial date set for this matter. Defense counsel is unavailable on November 21, 2005. It was agreed at the hearing that additional time would be necessary to produce and review discovery materials adequately. The Government did not object to a continuance. At the hearing, the Court conducted a colloquy with Defendant regarding his rights under the Speedy Trial Act and Defendant waived those rights.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's oral motion to continue the pretrial and trial is

3 **GRANTED.**

4 2. The jury trial set for November 14, 2005, is **stricken**. A new jury trial
5 is set for **December 5, 2005**, in Yakima, Washington. Counsel shall meet in
6 chambers at 8:30 a.m. Jury selection shall begin at 9:00 a.m.

7 3. Pursuant to 18 U.S.C. § 3161(h)(8)(A), the time between November 14,
8 2005, the current trial date, until December 5, 2005, the new trial date, is **declared**
9 **excludable** for purposes of the Speedy Trial Act. The Court finds that the
10 continuance is necessary to allow Defendant time to fully investigate and prepare
11 for trial. Defendant's interest in this investigation and preparation outweighs the
12 interest of the public and Defendant in a speedy trial.

13 4. Defendant's Motion to Dismiss Case Based Upon Speedy Trial
14 Violations (Ct. Rec. 21) is **DENIED**.

15 5. Defendant's Motion for Disclosure of Evidence Pursuant to Federal
16 Rule of Evidence 404(b) and 609 (Ct. Rec. 25) is **GRANTED**. The Government
17 shall file with the Court affidavits identifying all Fed. R. Evid. 404(b) and 609
18 evidence it intends to introduce at trial, including its purpose, on or before
19 November 10, 2005.

20 6. Defendant's Motion for Discovery (Ct. Rec. 27) is **GRANTED**. The
21 Government shall secure access for defense counsel to all physical evidence on or
22 before Friday, November 4, 2005, and shall produce expert reports and all other
23 disclosures required by Federal Rule of Criminal Procedure 16 on or before
24 November 10, 2005.

25 7. Defendant's Motion to Compel Grand Jury Transcripts (Ct. Rec. 29) is
26 **GRANTED**. The Government shall make available to Defendant the Grand Jury
27 transcripts of which it has possession relating to witnesses it intends to call to
28 testify on or before November 10, 2005.

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IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel.

DATED this 3rd day of November, 2005.

s/ ROBERT H. WHALEY
Chief United States District Judge

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